

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6729 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not?Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?No
5. Whether it is to be circulated to the Civil Judge?No

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CHEMICALS KAMDAR SANGH

Versus

TATA CHEMICALS LTD & ORS

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Appearance:

Mr.A.K.Clerk for petitioner.

Mr.Thakkar for M/s.Trivedi & Gupta for Respondent No. 1

MR HK Rathod for Respondent No. 2

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/05/96

ORAL JUDGEMENT

The facts giving rise to the present Special Civil Application are as under :

The petitioner union is a recognised union under the Code of discipline having majority membership of the workers working as Tata Chemicals Limited, Mithapur, it raised a charter of demands for all the workmen of the company- Respondent No.1. Respondent No.2 is other

unrecognised union and this unrecognised union of Tata Chemical Skilled Mazdoor Sangh also raised the demands identical to the demands raised by the petitioner union. On such charter of demands being raised on behalf of the petitioner union and respondent No.2, the conciliation proceedings were held but the same failed and the appropriate government made a reference to the Industrial Tribunal, Rajkot for adjudication of these demands raised by the petitioner union as also by the respondent no.2 union. Two References were registered as (ITR) 245/88 and (ITR) 263/88 before the Industrial Tribunal, Rajkot. The petitioner union was represented in the reference filed by the respondent no.2 union and the respondent no.2 was also joined as party in the reference which had been made at the instance of the petitioner union. The petitioner union asked for the interim relief to the tune of Rs.150/- p.m. towards general demands pending adjudication of the reference and this interim relief was prayed in the statement of claim filed by the petitioner union in reference No.(ITR) 245 of 1988. The demand of respondent no.2 was for sum of Rs.700/-. The Industrial Tribunal passed an interim award and granted Rs.75/- per workman per month and the interim relief prayed for by the respondent no.2 was not granted. On 10.11.1991 the petitioner union arrived at a settlement with respondent No.1 company and this settlement was reduced in writing according to which the benefits of various kinds were agreed to be paid with effect from 1.1.1987 as per charter of demands. The settlement was produced before the Industrial Tribunal for passing the award in terms of the settlement. The respondent no.2 union contended that no amount be given to the public charitable trust. The petitioner union filed reply explaining the reasons for the deduction @3%. The Industrial Tribunal by the impugned order dated 17.7.1992, has modified the terms of the settlement by saying that the condition contained in settlement i.e. @ 3% of the amount shall be deducted and paid to Chimanlal Shah and Somnath Dave Smarak Trust shall no more be effective and instead directed that 3% of the amount shall be paid into pension fund of each and every workman according to his claim. This order dated 17.7.1992 is under challenge in this petition.

The original term in question as per the settlement was as under :

"As the interim relief has already been paid to the workers from 1.1.1987 and as the additional benefit is made available ;at the instance of Chemicals Kamdar Sangh to the workmen covered by this settlement, out of the total gross arrears

payable to each workmen, whether in employment or not on the date of this settlement, 3% shall be deducted and paid to 'Shri Chimanlal Shah & Sri Somnath Dave Smarak Trust' towards the welfare activities to be carried out by the said Trust for the workmen of Tata Chemicals and their family members."

Effect of the impugned order is that condition of paying 3% amount of the additional benefit to Shri Chimanlal Shah and Somnath Dave Smarak Trust stands obliterated and this amount which was to go in the public trust for the welfare activities to be carried out by the said trust for the workmen of Tata Chemicals and their family members shall now be apportioned in the pension fund of the immediate employee.

Mr.A.K.Clerk appearing on behalf of the petitioner has submitted that the consolidated amount which can be otherwise made use of for the benefit of the employees of the Tata Chemicals as a class will now go in to the credit of the pension account of immediate employee and thus the settlement which was arrived at by the Union keeping in view the utilization of consolidated amount for the welfare of the working class will go to the individual and thus the whole purpose of the union's objective to foster for the welfare of united workers stands defeated and therefore the impugned order is contrary to the general interest of workmen of Tata Chemicals. Mr.Rathod appearing for the union-respondent No.2 which is neither recognised nor a representative union submitted that in case the amount is transferred to the trust, it is likely to be misused or in any case it may not be used wholly for the purpose of welfare of the employees of Tata Chemicals and thus the loudable and pious purpose for which the amount is being sent to the trust will be defeated.

On 18.4.1996 Mr.A.K.Clerk submitted an affidavit of Managing Trustee of Shri Chimanlal Shah and Somnath Dave Smarak Trust so as to show as to how the amount in dispute shall be utilized by the said Trust. The Managing Trustee Shri Ramanlal M. Shukla who is also a Vice President of the petitioner union has filed an affidavit dated 18.4.1996 stating on behalf of the trustee of Chimanlal Shah and Somnath Dave Trust and he has undertaken that the trust shall utilize the amount received by it as per the settlement between the company and Chemical Kamdar Sangh dated 10.11.1991 for the benefit of the workmen of Tata Chemicals Limited only and their family members have also been included in the

relevant clause of the settlement. It has been further undertaken that the Trust shall utilize the said amount for the purpose of providing housing facilities, library facilities, sewing classes, vocational guidance, educational classes and such other purposes which may directly and substantially benefit the concerned workmen and their family members and further that the trust is always willing and would abide by any direction which may be given by this court in this regard for the purpose of utilising the funds in question notwithstanding the fact that this trust or aforesaid Managing Trustees are not parties to the aforesaid proceedings.

The terms of this undertaking are opposed by Mr.H.K.Rathod appearing on behalf of respondent No.2 union on the ground that the impugned order passed by the Industrial Tribunal does not suffer from any error, this Court cannot take as an appellate court while exercising powers under Article 227 of the constitution and the Industrial Tribunal has correctly modified the terms of the settlement keeping in view the interest of the employees, that this trust was not a party in the proceedings before the Industrial Tribunal and those activities which have been sought to be undertaken by the trust to be carried out for the welfare of the working class are already there as provided by the company respondent No.1, and therefore, the impugned order does not warrant any interference.

The only objection which has been raised by the learned counsel on behalf of the Tata Chemicals against the term of the undertaking given by the Managing Trustee of Chimanlal Shah and Somnath Dave Smarak Trust is that so far as the housing facilities are concerned they cannot be provided for in the area of the township of the company of Tata Chemicals Ltd.

I have considered the submission on behalf of all the sides. It is a matter of common knowledge that once there is union working for the common cause of the workmen and by way of settlement or for any other alike reason an opportunity comes when the representative union can utilize certain amount for the purpose of carrying out welfare activities, the union would certainly foster to achieve the object through its scheme which may be useful to the workmen as a class. The approach and orientation of the union will always be for the general benefit of the working class as opposed to the interest of an individual. Keeping that end in view if the petitioner union which is a representative union of Tata Chemicals Ltd. has chosen to follow such course of

action by which the consolidated amount is used for common cause rather than being distributed in titbits in the hands of an individual workman. No exception can be taken to such a course of action and thus with such an orientation, and approach, if the term is arrived at in the settlement between the representative union and the company, the same should not have been disturbed by the Industrial Tribunal so as to disintegrate the consolidated amount into the hands of individuals. In this regard, the approach of respoondent No.2 union in seeking to support the order passed by the Industrial Tribunal does not appear to be conducive to the interest of the workmen as a class. The fact cannot be lost sight of that the deponent of the affidavit dated 18.4.1996 i.e. Shri Ramanlal Shukla who is Vice President of the petitioner union is himself a Managing Trustee of the trust and he has given undertaking on behalf of the trustees of Shri Chimanlal Shah and Somnath Dave Smarak Trust and as per this undertaking it is transperantly clear that the amount shall be utilized by the trust for the benefit of the workmen and their family members and the amount shall be utilized for the benefit of all the workmen of Tata Chemicals alone and no other company. The objection of Mr.Rathod that the order passed by the Industrial Tribunal does not suffer from any error and cannot be accepted for the simple reason that, in dealing with such matters the Industrial Tribunal has to act with an approach and orientation for a class as a whole and the interest of an individual should always yield before the interest of all the workmen put together. Thus the very approach with which the matter has been set back the Industrial Tribunal is itself an error which goes to the root of the matter. For the objection that this Court cannot sit as an appellate authority over the order passed by the Industrial Tribunal while exercising power under Article 227 of the Constitution of India it will be sufficient to say that the paramount interest is the interest of the labour class as a whole and therefore, it is found that the consolidated amount should be made use of for common good of the employees of the company at the instance of the representative union. It is not a case acting as an appellate authority but a matter to see as to what view is required to be taken in accordance with the settled principles keeping in view the paramount interest of the employees and if it is found that the view taken by the Industrial Tribunal goes against the paramount interest of the working class as a whole, this Court in exercise of powers under Article 227 of the Constitution is not precluded from interfering with such orders passed by the Industrial Tribunal. The guiding principle in such cases should be to prefer workmen

against a workman and not a workman against workmen.

Whether the trust itself is a party before the Industrial Tribunal or not, has lost importance because the Managing Trustee himself had appeared in person before this Court and submitted the affidavit dated 18.4.1996 and is present even today in the Court while this order is being dictated and there is no reason to disbelieve that the Managing Trustee who is also Vice President of the petitioner union would back out from such undertaking, more particularly, when it has been given out during the course of hearing that the Trust would abide by all these conditions even if it was not a party before the Industrial Tribunal or even if it is not a party in these proceedings.

Last and feeble objection which has been raised by Mr.H.K.Rathod is that the activities which are sought to be carried out by the trust for the workmen of the company are all such activities which are already carried on by the company and therefore, no useful purpose would be served by transferring the amount to the trust for such activities. Even assuming that such activities are being carried on by respondent No.1 company, such activities and functions can be given impetus by the use of the amount by the trust on the advice of the union and therefore this objection raised by Mr.Rathod is not at all tenable. The learned counsel for the company has no objection, if any welfare activities are carried out or developed in the company but his objection is that the housing facilities cannot be given in the area of the township of the respondent company. Mr.A.K.Clerk appearing on behalf of the petitioner union has categorically stated that no activities with regard to extending the housing facilities shall be undertaken in the area of the township of the company unless and until the company itself consents to it and in case the company does not consent for the development of such housing facilities in the area of the township of the company such facilities shall be made available for the workmen just adjacent to the outskirts of area of the company.

Upshot of the aforesaid discussion is that this Special Civil Application succeeds and the impugned award dated 17.7.1992 passed by the Industrial Tribunal modifying to the term of of the settlement is hereby quashed and set aside. The original terms of the settlement which had been agreed between the petitioner representative union and the respondent company are hereby restored and such terms as contained in the settlement shall govern the rights obligations and duties of all the parties including the trust in whose favour

the amount is sought to be awarded subject to what has been observed and recorded in this order.

This Special Civil Application is accordingly allowed. Rule is made absolute. No order as to costs.

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